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<b>RODERICK T. BOLDEN, Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 06-621</b>
	)	<b>Issued: May 15, 2006</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>INTERNAL REVENUE SERVICE,</b>	)	
<b>New Orleans, LA, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

On January 18, 2006 appellant filed a timely appeal from a January 19, 2005 Office of Workers' Compensation Programs' merit decision denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant sustained a recurrence of disability causally related to his January 28, 2002 accepted employment injury.

On February 6, 2002 appellant, then a 32-year-old telecommunication specialist, filed a traumatic injury claim noting that he was in a work-related motor vehicle accident on January 28, 2002. By letter dated March 28, 2002, the Office accepted appellant's claim for cervical strain and thoracic sprain. On May 9, 2002 appellant underwent a selective root block

under fluoroscopy and a caudal epidural on September 9, 2002. Appellant returned to work in April 2002. The Office authorized physical therapy from January 6 to May 6, 2003.

In a report dated August 27, 2003, Dr. Stephen A. Gick, a Board-certified orthopedic surgeon, indicated that appellant continued to have significant problems. He indicated that appellant fell through a ceiling the day before and jarred his back.

In a September 11, 2003 report, Dr. Jorge E. Isaza, a Board-certified orthopedic surgeon, assessed appellant with back pain and herniated nucleus pulposus of the lumbar spine. Dr. Isaza noted that appellant had been living with back pain since a military injury in 1989 when he was carrying heavy equipment over a hill and collapsed.

The Office received a request for a nucleoplasty at L3-4 on January 9, 2004. The record reveals that the Office treated this request for surgery as a claim for a recurrence of medical disability.

By letter dated January 16, 2004, the Office requested further information from appellant justifying the surgery. The Office asked for a physician's opinion concerning the relationship between appellant's disability on or after August 26, 2003 and both the original injury of January 28, 2002 and the intervening injury of August 26, 2003.

In a January 12, 2004 report, received by the Office on February 11, 2004, Dr. John E. Clark, a Board-certified physiatrist, stated that he saw appellant for pain management purposes.

In a February 9, 2004 report, Dr. Isaza indicated that he first saw appellant on September 11, 2003 with a chief complaint of low back pain. He noted appellant's history as having injured himself in the military in 1989. Dr. Isaza noted that a magnetic resonance imaging scan of the lumbar spine dated August 14, 2002 showed appellant to have L4-5 and L5-S1 disc herniations. Appellant had a successful lumbar discogram on November 11, 2003. He noted that appellant's current diagnosis L3-4 discogenic pain, and that it was recommended that appellant undergo an L3-4 nucleoplasty to address the discogenic pain. The estimated time of recovery would be four to six weeks.

A repeat lumbar discectomy was performed on November 11, 2003.

By decision dated April 30, 2004, the Office denied appellant's claim for a recurrence of disability for the reason that the evidence did not establish that the current medical condition was related to his accepted work injury of January 28, 2002.

On May 11, 2004 appellant requested an oral hearing before an Office hearing representative. An oral hearing was held on October 28, 2004.

In a decision dated January 19, 2005, the Office hearing representative affirmed the April 30, 2004 decision. He found that appellant did not submit evidence that his lumbar disc condition in August 2003 was causally related to the lumbar and cervical strains sustained on January 28, 2002.

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office's regulations provides in pertinent part:

"Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>1</sup>

The regulations also define a recurrence of medical condition as a documented need for further medical treatment after release from treatment for the accepted condition or injury.<sup>2</sup> The Board has held that, in order to establish a claim for a recurrence of disability, a claimant must establish that he experienced a spontaneous material change in the employment-related condition without an intervening injury.<sup>3</sup>

### **ANALYSIS**

Appellant's claim was accepted for cervical strain and thoracic sprain. However, the evidence does not establish that appellant's preexisting lumbar disease was aggravated by the employment-related injury. The Board notes that appellant returned to work in April 2002 and received physical therapy to May 6, 2003. When appellant saw Dr. Glick on August 27, 2003, the physician noted that appellant fell through a ceiling the day before thereby injuring his back. Dr. Isaza noted that appellant had been living with back pain since his 1989 military injury, but did not reference the accepted work injury in his reports. In fact, there is no medical evidence that appellant's work injury caused any back problems after the intervening accident in August 2003. Accordingly, appellant has failed to provide medical evidence establishing that an aggravation of a preexisting lumbar disc condition was a result of the work-related accident in addition to failing to establish that appellant's lumbar disc condition in August 2003 was causally related to the accepted injury.

### **CONCLUSION**

Appellant has not established a recurrence of disability causally related to his January 28, 2002 employment-related injury.

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<sup>1</sup> 20 C.F.R. § 10.5(x).

<sup>2</sup> 20 C.F.R. § 10.5(y).

<sup>3</sup> *Carlos A. Marrero*, 50 ECAB 117 (1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 19, 2005 is affirmed.

Issued: May 15, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board